

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

DARRELL CARTER,

Plaintiff,

v.

CIVIL ACTION NO. 2:21-cv-00216

CORPORAL ALEXANDER HENDRIX  
and CORPORAL RICHARD TONEY,

Defendants.

**MEMORANDUM OPINION AND ORDER**

On April 9, 2021, the Plaintiff filed his *Complaint* (Document 1) in this matter. By *Administrative Order* (Document 2) entered on April 12, 2021, the matter was referred to the Honorable Omar J. Aboulhosn, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636.<sup>1</sup>

Currently pending in the matter are the *Defendant's Motion to Compel* (Document 33), the *Defendants Alexander Hendrix and Richard Toney's Motion for Summary Judgment* (Document 35), and the *Defendants' Motion to Designate the Motion for Summary Judgment as Unopposed and to Dismiss Complaint for Failure to Prosecute* (Document 39).

On September 14, 2022, the Magistrate Judge submitted a *Proposed Findings and Recommendation* (Document 56) wherein it is recommended that this Court grant the *Defendants'*

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<sup>1</sup>The matter was originally referred to the Magistrate Judge for discovery. However, the referral was modified on January 20, 2022, based on the Plaintiff's *pro se* status.

*Motion to Designate the Motion for Summary Judgment as Unopposed and to Dismiss Complaint for Failure to Prosecute* (Document 39), dismiss the Plaintiff's *Complaint* (Document 1) with prejudice, deny as moot the *Defendants Alexander Hendrix and Richard Toney's Motion for Summary Judgment* (Document 35), and remove this matter from the Court's docket. Further, by footnote contained in the *Proposed Findings and Recommendation*, the Magistrate Judge ordered that the *Defendant's Motion to Compel* (Document 33) be denied as moot; however, the motion remains pending on the docket.

Objections to the Magistrate Judge's *Proposed Findings and Recommendation* were due by October 3, 2022, and none were filed by either party. The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of *de novo* review and a party's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984).

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the *Proposed Findings and Recommendation*, and **ORDERS** that the *Defendants' Motion to Designate the Motion for Summary Judgment as Unopposed and to Dismiss Complaint for Failure to Prosecute* (Document 39) be **GRANTED**, the Plaintiff's *Complaint* (Document 1) be **DISMISSED with prejudice**, the *Defendant's Motion to Compel* (Document 33) be **DENIED as moot**, the *Defendants Alexander Hendrix and Richard Toney's Motion for Summary Judgment* (Document 35) be **DENIED as moot**, and this matter be **REMOVED** from the Court's docket.

The Court **DIRECTS** the Clerk to send a certified copy of this Order to Magistrate Judge Aboulhosn, counsel of record, and any unrepresented party.

ENTER:        October 11, 2022

A handwritten signature in blue ink, reading "Irene C. Berger", is written over a horizontal line.

IRENE C. BERGER  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF WEST VIRGINIA